

### **REMARKS**

Claims 2-5 and 14-33 are pending in this application after this amendment. Claims 1 and 6-13 has been canceled without prejudice or disclaimer to the subject matter included therein. New claims 19-33 have been added. No new matter has been added by the addition of new claims 19-33. Based on the amendments and remarks made herein, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections.

By this amendment, Applicants have amended the claims to more appropriately recite the claimed invention. It is respectfully submitted that these amendments are being made without conceding the propriety of the Examiner's rejections, but merely to timely advance prosecution of the present application.

In the outstanding Official Action, the Examiner rejected claims 2-4 under 35 U.S.C. §112, second paragraph; provisionally rejected claims 1-5 and 14-18 on the ground of non-statutory obviousness type double patenting as being unpatentable over claims 1-10 of copending application no. 11/997539; and rejected claims 1-3, 5 and 16-18 under 35 U.S.C. §102(b) as being anticipated by Narcisi (USP 5,010,806). Applicants respectfully traverse these rejections.

Applicants wish to thank the Examiner for indicating that claims 4 and 15 include allowable subject matter.

### **Examiner Interview**

Applicants wish to thank the Examiner for the Interview conducted on September 2, 2009. During the interview, the parties discussed the claimed invention and the cited art. It is respectfully submitted that the amendments and remarks herein are made further to discussion between the parties during the Interview.

### **Claim Rejections – 35 U.S.C. §112, Second Paragraph**

The Examiner rejected claims 2-4 asserting the terms “before evaporation” and “after evaporation” are indefinite since any liquid, such as water, has, at any time, a vapor pressure and is at a constant state of evaporation.

By this amendment, Applicants have amended the claims to remove the objectionable terms. This amendment is being made without conceding the propriety of the rejection but merely to advance prosecution of the present application. Based on the amendments to the claims, it is respectfully requested that the outstanding rejection be withdrawn.

### **Claim Rejections – Obviousness-type Double Patenting**

The Examiner provisionally rejected claims 1-5 and 14-18 on the ground of non-statutory obviousness type double patenting as being unpatentable over claims 1-10 of Patent Application No. 11/997,539.

By this amendment, Applicants have amended the claims to more clearly recite the claimed invention. This amendment is being made without conceding the propriety of the rejection but merely to advance prosecution of the present application. Based on the amendment to the claim, it is respectfully requested that the outstanding rejection be withdrawn.

### **Claim Rejections – 35 U.S.C. §102**

The Examiner rejected claims 1-3, 5 and 16-18 under 35 U.S.C. §102 asserting the claims are anticipated by the teachings of Narcisi. Applicants respectfully disagree with the Examiner’s characterization of this reference.

In order to establish a *prima facie* case of anticipation under 35 U.S.C. § 102, the Examiner must provide a reference that teaches each element of the claim. See *Richardson v.*

*Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d (BNA) 913, 920 (Fed. Cir.), *cert. denied*, 493 U.S. 853, 107 L.Ed 2d 112, 110 S.Ct. 154 (1989).

The disclosure of Narcisi is directed to a machine to fast cook pasta and similar foods. The machine comprises a single cooking chamber in which to complete both of a two phase cooking cycle. The first phase exposes the pasta in the cooking chamber to very high temperature water, 300 to 400 degrees Fahrenheit, under very high pressure, sufficiently high to substantially prevent vaporization thereof, for a period of about thirty seconds. The second phase of the cooking cycle exposes the pasta in the cooking chamber to hot water below the boiling point but at a cooking temperature of about 190 degrees Fahrenheit for about twenty seconds. After the second phase of the cooking cycle it is drained from the cooking chamber. The cooking chamber is then opened to deposit the individual serving of cooked pasta on to a serving plate. (Abstract)

Designed for cooking, Narcisi's construction is strikingly different from that of claim 2 of the present application. Specifically, Narcisi is directed to a construction in which, in both the first and second phases, an article-to-be-heated (pasta) is heated with high-temperature water without use of steam, and discloses nothing comparable with steam generating means "that generates steam from water fed thereinto from water feeding means and that feeds the steam into a heating chamber in which an article-to-be-heated is heated" as recited in the present claim.

Further, Narcisi discloses nothing related to such steam generating means and nothing comparable with first time counting means "that counts a retention time for which the water present inside the steam generating means is retained there" or controlling means "that, when the retention time counted by the first time counting means has reached a predetermined time, makes the water draining means drain the water inside the steam generating means" as recited in the present claim.

In Narcisi, the purpose of draining the hot water from the cooking chamber after the passage of a predetermined time (for example, 20 seconds) as counted by the timer is simply to allow, on completion of cooking time, the lid at the bottom of the cooking chamber to be opened

and the pasta inside to be taken out. Thus, every cycle of cooking ends with the drainage of water. By contrast, the invention recited in the claim also aims at alleviating the burden on the user associated with water replenishment while paying attention to hygienic problems (spoilage of water), because draining water every cycle of cooking increases the consumption of water and hence the frequency of water replenishment and thus increases the burden on the user (see paragraphs [0004] and [0006] in the specification as originally filed, which correspond to paragraphs [0004] and [0006] in US 2007/0183555 A1).

Narcisi does not control the draining of water with consideration given to both hygienic problems and the burden on the user. Therefore, the present claim is not clearly anticipated by Narcisi disclosing no comparable control of drainage of water.

As Narcisi fails to teach or suggest all of the elements recited in claim 2, Applicants respectfully submit that claim 2, together with claims dependent thereon, are not anticipated by the teachings of Narcisi. It is respectfully requested that the outstanding rejection be withdrawn. It is further respectfully submitted that claims 3-4 include at least one element similar to those discussed above with regard to claim 2 and thus these claims, together with claims dependent thereon, are allowable for the reasons set forth above with regard to claim 2. Further, claims 31-33 recite at least one element similar to those discussed above with regard to claim 2, i.e., a steam generating device, and thus these claims, together with claims dependent thereon, are allowable for the reasons set forth above with regard to claim 2.

### **Conclusion**

In view of the above amendments and remarks, Applicants believe the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Catherine M. Voisin Reg. No. 52,327 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Application No. 10/593,592  
Amendment dated September 17, 2009  
Reply to Office Action of June 17, 2009

Docket No.: 2936-0283PUS1

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: September 17, 2009

Respectfully submitted,

By 

Catherine M. Voisin

Registration No.: 52,327

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicants